

Court File No.

CV-17-576062

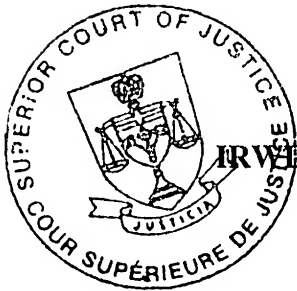
**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**RENÉ BREWER**

Plaintiff

-and-



**IRVIN FEFERGRAD and ROYAL COLLEGE OF DENTAL  
SURGEONS OF ONTARIO**

Defendants

**STATEMENT OF CLAIM**

**TO THE DEFENDANT(S):**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff(s). The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form l8A prescribed by the Rules of Civil Procedure, serve it on the plaintiff(s) lawyer(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form l8B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS ACTION BUT ARE UNABLE TO PAY THE LEGAL**

**FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**IF YOU PAY THE PLAINTIFF'S CLAIM**, and \$1,500.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

*Take notice: This action will ~~be~~ automatically be dismissed, if it has not been set down for trial, or terminated by any means within five years after the action was commenced unless otherwise ordered by the Court.*

Date: May 29, 2017

Issued by

*Anthony N. Fuller*  
Local Registrar

Address: 393 University Avenue  
10th Floor  
Toronto, Ontario  
M5G 1E6

TO: **IRWIN FEFERGRAD**  
Registrar, Royal College of Dental Surgeons of Ontario  
6 Crescent Road  
Toronto, ON M4W 1T1

AND TO: **ROYAL COLLEGE OF DENTAL SURGEONS OF ONTARIO**  
6 Crescent Road  
Toronto, ON M4W 1T1

**CLAIM**

## 1. The Plaintiff claims:

- (a) Against all of the Defendants, general and aggravated damages in the sum of \$1,000,000 (including the equivalent of 24 months of regular salary payable in lieu of reasonable notice for the termination of her employment, less the amount actually paid to the Plaintiff as termination pay);
- (b) The cost of usual benefits in the above notice period;
- (c) Against the Defendant, Irwin Fefergrad, punitive damages in the sum of \$100,000 for the highhanded manner in which he conducted dealings with the Plaintiff;
- (d) Prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended commencing from January 23, 2017;
- (e) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (f) The costs of this action, including all proceedings in connection with the action, plus all applicable taxes; and
- (g) Such further and other Relief as this Honourable Court deems just.

**THE PARTIES**

2. The Plaintiff, René Brewer (“**René**”), is and was at all material times, a duly qualified lawyer residing in Toronto, Ontario.

3. The Defendant, Royal College of Dental Surgeons of Ontario (“**RCDSO**”), is the governing body for dentists in Ontario. It is a regulator with a self-described mission “to protect the public’s right to quality dental services by providing leadership to the dental profession in regulation.”

4. The RCDSO has a governing Council of the College (“**Council**”) consisting of 12 dentists elected by dentists registered to practice in Ontario, 9-11 members of the public nominated by Ontario’s government, and 2 members appointed by each of the university dental faculties in Ontario (the University of Toronto and Western University). The Council appoints a Registrar/chief executive officer. That Registrar in turn reports to the Council on RCDSO’s management and affairs.

5. The Defendant, Irwin Fefergrad (“**Fefergrad**”) was at all material times the Registrar and Chief Executive Officer of the RCDSO.

**THE PLAINTIFF’S EMPLOYMENT AT THE RCDSO**

6. Fefergrad hired René to be the Manager of the RCDSO’s Professional Liability Program (“**PLP**”), pursuant to an employment contract dated October 10, 2011. René reported directly to Fefergrad.

7. René moved from Ottawa to Toronto for this position and began her term of employment on November 7, 2011. Her title was subsequently changed to Director of PLP in January of 2014.

## **PLP**

8. PLP was created in the 1970s to provide its members with protection and support when facing malpractice and negligence claims. The program is funded through annual fees paid by RCDSO members. PLP was at all times and continues to be a department of the RCDSO, overseen by a standing committee of the RCDSO Council.

9. PLP has a unique role in the structure of the RCDSO, since the program is designed principally to serve and protect registered dentists, while the rest of the RCDSO performs a regulatory role, in which its primary function is to protect the public. There is consequently a potential conflict of interest – PLP may be defending a dentist in respect of the same conduct that may be subject to an investigation or prosecution by the RCDSO.

10. It was, therefore, at all material times, a policy of the RCDSO that PLP matters had to be isolated from the rest of the RCDSO, and not discussed, shared, or communicated with the Registrar. PLP was walled off from the rest of the RCDSO. Fefergrad publicly explained and supported this policy.

## **THE PLAINTIFF'S EXEMPLARY TRACK RECORD**

11. Throughout her term of employment at the RCDSO, René's performance was exemplary. Under her management, PLP ran more efficiently, and René's efforts significantly reduced

liabilities and exposure for the RCDSO. In fact, her management was responsible for millions of dollars in savings to the RCDSO. Throughout her term of employment, her performance appraisals from Fefergrad were excellent, and her work was complimented and lauded by Council members.

12. René inquired about performance bonuses with Fefergrad at the outset of her employment, and again in or around April of 2013. Fefergrad deliberately misinformed her, stating that the RCDSO did not pay its employees bonuses.

#### **TOXIC WORK CULTURE AT THE RCDSO**

13. Shortly after beginning her employment, René discovered systemic problems with the work culture and practices at the RCDSO. These problems included, but were not limited to workplace harassment and bullying, cronyism, oppressive or problematic internal policies, and ethical breaches by senior RCDSO staff, including Fefergrad.

#### **Workplace Bullying & Harassment/Cronyism**

14. Throughout her employment, many employees complained to René about low morale and malaise at the RCDSO. This was caused by a systemic culture of harassment and workplace bullying of RCDSO employees at the hands of senior staff, including Fefergrad and a former human resources director.

15. To make matters worse, there was a culture of cronyism, in which employees who were unquestionably loyal to Fefergrad were rewarded, whereas employees who disagreed with him or expressed dissent were publicly castigated, undermined, and humiliated.

16. By early 2012, René witnessed these problems herself but did not immediately confront Fefergrad for fear of reprisals. She was unable to report Fefergrad's conduct to Council because Fefergrad had informed her at the outset of her employment that non-Committee-related communications between Council members and RCDSO staff were strictly forbidden and constituted a firing offence.

17. As a result of the toxic workplace culture created by Fefergrad, there has been high turnover in the Professional Conduct and Regulatory Affairs (“PCRA”) department of the RCDSO. By late 2012, René began attempts to discuss the problems in PCRA with Fefergrad on numerous occasions and remedy the situation, but Fefergrad was not receptive to any criticisms of PCRA or its leadership. On several occasions, he was derisive, rude, and intimidating towards René.

18. When Fefergrad hired a new Manager of Human Resources in 2014, René conveyed her concerns about reported mistreatment of staff and retention issues in PCRA, but the problems did not abate. In fact, since the beginning of 2014, at which time the PCRA had 26 staff members, there have been at least 22 departures from that department by resignation or termination.

19. René herself suffered as a result of the unhealthy culture at the RCDSO, and was, herself, undermined and mistreated by Fefergrad on numerous occasions when she expressed views different from his own.

### Sexual Harassment

20. Shockingly, despite a history of sexual harassment of several staff members by a former senior employee, no sexual harassment policy existed at the RCDSO until René, through persistent efforts, convinced Fefergrad to implement one in 2014.

21. During her employment, René was informed of three separate allegations of harassment, including sexual harassment, by RCDSO staff at the hands of a retired employee who had returned to the RCDSO in a part-time role. She reported these allegations to Fefergrad. He did not take appropriate action, and instead, allowed the former employee to retire a second time months after the third allegation. The allegations were not formally investigated or dealt with transparently.

### Problematic Policies & Practices

22. René also discovered policies and practices at the RCDSO that contributed to low staff morale, including the following:

- a. Non-management staff had almost no Internet access;
- b. Employees were not permitted to say where they worked on their LinkedIn profiles; and
- c. There was a system of total pay secrecy under which department heads did not know the salaries of their own staff, and under which numerous RCDSO employees felt that compensation was being decided in an unfair and arbitrary



manner, and pursuant to the aforementioned culture of cronyism. This unfair and secret pay system included distribution of bonuses to employees who were unquestionably loyal to Fefergrad, while other employees including René were misled to believe that bonuses were never paid as a matter of policy.

23. Despite initial resistance from the entire management team, including Fefergrad, René succeeded in having the restrictions on Internet access and LinkedIn removed during her first six months at the RCDSO.

24. In 2013, René wrote a memo to Fefergrad highlighting the negative effects of pay secrecy on morale and productivity and suggesting that management review the RCDSO's compensation policies, including how salaries and merit increases were determined, to make them more transparent. Fefergrad ignored this memo and total pay secrecy persists to this day.

25. In addition, the RCDSO still has no guidelines for assigning merit increases. Although supervisors are asked for input on "stand-out" employees each year, their comments do not necessarily impact salary decisions, which are made secretly, by Fefergrad and human resources, and not communicated to middle or senior management.

### *Ethical Breaches*

26. In early 2012, René learned of serious ethical breaches at the RCDSO when a PLP staff member disclosed that Fefergrad had forced PLP staff to attend meetings with him in the past to discuss PLP files, notwithstanding the policy that PLP matters were supposed to be "coned" from

the Registrar and the rest of the RCDSO (the "**Meetings**"). In fact, Fefergrad required PLP staff to send unredacted expert reports from PLP cases to his office.

27. Shortly after her employment with the RCDSO began, René terminated the practice of sharing unredacted expert reports from PLP cases with Fefergrad.

28. In a further attempt to prevent such unethical conduct from continuing, René proposed reforms that included requiring RCDSO staff to sign a Code of Conduct acknowledging that any breach of confidentiality between PLP and the rest of the RCDSO would be a firing offence. This proposal was rejected by Fefergrad.

#### **2016: RENÉ TAKES A STAND & FEFERGRAD ORCHESTRATES HER TERMINATION**

29. Because of the aforementioned issues, by late 2016, morale at the RCDSO had significantly worsened. René reported the widespread dysfunction affecting RCDSO staff, including bullying and other toxic behavior, to Fefergrad both verbally and by email correspondence in early December, 2016. Fefergrad was unreceptive and his intimidating behavior towards René worsened.

30. On several occasions, Fefergrad deliberately put René in uncomfortable positions or undermined her authority and autonomy at the RCDSO in front of other staff.

31. Before the Christmas break in 2016, Fefergrad notified the Executive Committee, which conducts RCDSO business between Council meetings, that he wished to terminate René's employment. As justification, he alleged that René refused to abandon the idea of creating an off-shore captive insurance company to issue the malpractice policy for RCDSO members in

spite of the fact that the Executive Committee had rejected that proposal in August 2015. This justification, which Fefergrad repeated to Council in January 2017, was untrue. René never pursued the idea after the Executive Committee vote and she expressly instructed a consultant retained in the fall of 2016 to advise the RCDSO on risk transfer alternatives for PLP not to consider off-shore captives.

32. Despite the fact that Fefergrad and Council had always described René as a "superstar", the Executive Committee and Council took no independent steps to satisfy themselves that René's termination was justified and legal.

#### **2017: RENÉ ACQUIRES PROOF OF FEFERGRAD'S MISCONDUCT**

33. On January 18, 2017, René acquired minutes of the Meetings between Fefergrad and PLP staff, with RCDSO investigators also in attendance, during which details of files from PCRA and PLP were discussed (the "**Minutes**").

34. René forwarded the Minutes to the President and Vice President of the RCDSO. To the best of René's knowledge, the Executive Committee took no action in response to that information.

#### **TERMINATION & AFTERMATH**

35. On January 23, 2017, Fefergrad terminated René's employment without cause. During their final meeting, Fefergrad informed René he had decided to fire her in December 2016.

36. Fefergrad subsequently offered René additional severance pay in return for a release that would require her to be silent about any misconduct she was aware of at the RCDSO. She did not accept this offer.

37. On February 10, 2017, René sent a letter to Council outlining concerns about the implications of the Minutes and the mistreatment of staff at the RCDSO. She requested that Council conduct an independent investigation into working conditions at the RCDSO. To the best of René's knowledge, Council has not acted on this request.

#### **RENÉ'S TERMINATION WAS WRONGFUL**

38. René was wrongfully terminated as a reprisal for continuously challenging Fefergrad and imploring him and Council to address the toxic and inappropriate work environment at the RCDSO.

39. Ignoring and undermining René's concerns was negligent, and her termination as a reprisal for her efforts to remedy the problems at the RCDSO was, amongst other things, in violation of the *Occupational Health and Safety Act*, R.S.O. 1991, c. O.1 and the RCDSO's common law obligations to provide a reasonably safe workplace in which employees are protected against harassment, intimidation, and bullying by supervisors.

40. René's termination was a premeditated plan to silence her dissent against the toxic culture that Fefergrad had engendered and continued to perpetuate. It was executed in a dishonest and high-handed way.

41. Furthermore, the manner in which René was terminated was illegal. She was entitled to reasonable notice or appropriate severance pay in lieu of notice. She did not receive these. René was entitled to at least 24 months of notice when the following factors are considered:

- a. René is 56 years old;
- b. She provided 5 years and 2 months of stellar service to the RCDSO;
- c. She held a senior management role;
- d. Her annual compensation and vacation pay;
- e. Her extensive skills and experience (which were contributed to by a successful and stellar legal career prior to her employment at the RCDSO);
- f. The damage to René's reputation;
- g. The availability (or lack thereof) of similar employment; and
- h. The present economic climate.

42. René pleads that the termination provision of the employment contract: (i) does not exclude her common law entitlement to reasonable notice; and/or (ii) is void for failing to comply with Ontario's *Employment Standards Act*, 2000, S.O. 2000, c. 41, as amended.

43. At the time of her termination, René was earning \$215,000 per annum, plus benefits. René was paid five months base salary in lieu of notice. Her benefits continued for five weeks.

**LIABILITY OF THE RCDSO**

44. The RCDSO is liable to René for the following acts and omissions.

**Contractual**

45. The RCDSO breached express and implied terms of its employment contract with René in that:

- a. It failed to safeguard René against personal harassment and intimidation and to provide her with a healthy and safe work environment pursuant to its common law obligations and its duties under the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1;
- b. It failed to provide René with reasonable notice prior to her termination;
- c. It failed to provide René with compensation in lieu of notice;
- d. It failed to compensate René for severance;
- e. It did not, in any event, have just cause to terminate René. Her termination was illegal and a reprisal for her efforts to have the RCDSO comply with various ethical and statutory obligations;
- f. The manner in which René was treated during her employment by Fefergrad and the RCDSO and the subsequent manner in which she was terminated was dishonest, arbitrary, and capricious, in breach of the RCDSO's contractual obligations towards René pursuant to the good faith organizing principle.

*Fiduciary & Common Law*

46. The RCDSO owed René fiduciary duties and a common law duty of care to provide her with a work environment free of harassment, intimidation, and hostility, and to make reasonable efforts to investigate information and complaints of wrongdoing. The RCDSO breached these duties in that:

- a. It was willfully blind to, or negligently disregarded an abundance of information, including some provided by René directly, in relation to the toxic work environment at the RCDSO, and the failure of senior staff, including Fefergrad, to remedy these issues. Through its Council, it failed to make any reasonable investigations in relation to this information and failed to protect its employees, including René; and
- b. It failed to make reasonable inquiries or investigation into René's termination and the arbitrary and sudden timing of Fefergrad's decision to end her employment despite René's exemplary track record.

*Vicarious Liability*

47. To the extent that Fefergrad or any other RCDSO employees are liable to René, the RCDSO is vicariously liable for those acts and omissions.

**LIABILITY OF FEFERGRAD**

48. The Defendant Fefergrad is liable to René for the following acts and omissions:

*Deceit & Fraudulent Misrepresentation*

49. On at least two occasions, Fefergrad knowingly, fraudulently, and deceitfully represented to René that the RCDSO, as a matter of policy, did not grant employees performance bonuses. René relied on this misrepresentation from her superior to her detriment.

*Injurious Falsehood*

50. Fefergrad deliberately misled the Executive Committee and Council in obtaining support for his plan to terminate René. The information Fefergrad provided to the Executive Committee and Council to justify René's termination was false and unjustified and made with the intent to cause injury to René by discrediting her, embarrassing her, and terminating her. This misinformation, in part, led to her wrongful termination and consequent damages.

*Inducing Breach of Contract*

51. Fefergrad's actions also constitute the inducement of a breach of contract. The RCDSO owed René contractual obligations, which, as set out above, were breached during her employment, and because of the manner and event of her termination. Fefergrad, who was aware of those contractual obligations, intended to and procured a breach of them by, amongst other things:

- a. Intimidating, harassing, and humiliating René during her employment;
- b. Executing a devious plan to terminate her as early as December of 2016, which included deceiving Council as to the reasons for René's termination; and



- c. Following through with her wrongful dismissal, which occurred for no good cause, and which was direct retaliation against her for complaining about the toxic culture Fefergrad had engendered at the RCDSO.

*Intimidation/Retaliation against a whistleblower*

52. At various times during René's employment, Fefergrad was aggressive or threatening towards her in an attempt to intimidate, embarrass, and humiliate her. Fefergrad was determined to prevent René from investigating or complaining about the workplace abuses that were occurring at the RCDSO.

53. The manner in which Fefergrad deceitfully orchestrated René's termination was designed to intimidate her as a whistleblower and to send a message to anyone else in the RCDSO who might consider challenging Fefergrad or exposing the ongoing and toxic workplace culture at the RCDSO.

54. In addition to the common law tort of intimidation, René pleads and relies on the novel tort of retaliation against a whistleblower. Fefergrad committed this tort in that:

- a. Fefergrad was aware of misconduct and wrongdoing at the RCDSO;
- b. Fefergrad was aware that René was concerned about this misconduct and wrongdoing and had expressed her concerns directly to him. There was a risk that she would "blow the whistle" about this misconduct; and

- c. Fefergrad took steps in direct retaliation against René by terminating her, and offering her a payout for her silence. These steps included actionable wrongs such as injurious falsehood and inducing breach of contract. They were designed to silence René and to discredit her in public.

### **DAMAGES**

55. Because of the Defendants' wrongdoing set out above, René has suffered damages.

56. She has incurred general damages, including, but not limited to loss of earnings because of the Defendants' breaches of contract and their wrongful dismissal of her. Her reputation has suffered because of the wrongful termination and the various wrongful acts and omissions of the defendants. She has also incurred expenses associated with finding new employment.

57. The Defendants' actions have caused René a loss of reputation, dignity, and pride entitling her to aggravated damages.

58. Fefergrad's actions were pre-meditated, dishonest, malicious, and high-handed. He orchestrated her wrongful termination based on a false premise that he used to willfully deceive Council and Executive Committee. He terminated René to silence her and send a warning to other potential critics of him or the RCDSO. His actions represent a wanton and outrageous disregard for René's rights. His conduct therefore warrants punitive damages.

**STATUTES**

59. The Plaintiff pleads and relies on the *Negligence Act*, R.S.O. 1990, c. N. 1, as amended; the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended, and the *Employment Standards Act*, 2000, S.O. 2000, c. 41, as amended.

**VENUE**

60. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario.

May 29, 2017

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Lawyers for the Plaintiff, René Brewer

**RENÉ BREWER**

- and -  
Plaintiffs

**IRWIN FEFERGRAD et al**  
Defendants

Court File No.

*Cv-17-576062*

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Toronto

**STATEMENT OF CLAIM**

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